

ed, he has been placed in a position of disadvantage which more clearness in stating the plaintiffs' case, and their object, would have relieved him from. It is not meant to be said, that these matters of the trust, and agency, are so distinct and unconnected as to make it improper to unite them in the same bill; but if it was intended to join them, it should have been done in a plain manner, that the defendant might have shaped his course accordingly, under the advice of his counsel.

The exception must be overruled.

[No appeal was taken from this order.]

PHILIP A. SMALL ET AL.	}	DECEMBER TERM, 1848.
vs.		
CHARLOTTE C. D. OWINGS		
AND RICHARD GREEN.		

[AUTHORITY OF AGENT—PLEADING—ALLEGATION OF PART PERFORMANCE—SPECIFIC PERFORMANCE—STATUTE OF FRAUDS.]

THE authority of an agent to make an agreement for his principal, need not be in writing.

Where a party sets up an agreement in his bill, invalid under the statute of frauds, and the defendant by his answer, denies the agreement, it is not, perhaps, necessary for him to insist upon the statute as a bar; but, the complainant at the hearing, must establish the agreement by written evidence.

If the defendant admits, in his answer, the oral agreement, without insisting on the statute, the court will decree a specific performance, upon the ground that the defendant has thereby renounced the benefit of the statute.

The principles that regulate equity pleadings, will admit a different interpretation sometimes to be put upon a particular sentence, than would be required by grammatical rule.

The complainant cannot rely upon the admissions of the answer, and obtain relief upon those admissions, unless he has set them out in his bill.

A complainant in his bill, must put in issue whatever he intends proving, otherwise the evidence will be excluded. The Court of Chancery decrees only *secundum allegata et probata*.

There being no allegation in the bill of part performance, the evidence seeking to establish such part performance, was excluded.

The ground upon which a court of equity decrees the specific performance of a oral agreement, respecting lands, is, that in case of a clear part perform-